

Arkansas Health Information Exchange
Legal and Policy Strategic Plan – Draft 4-6-10

1. Privacy and Security Framework

Describe the state's privacy and security framework, which must consider federal and state laws and regulations and adherence to the privacy principles articulated in the HHS Privacy and Security Framework.

The underlying foundation of the Arkansas SHARE will be to provide a framework for exchange of health information within a realm of privacy and security. This notion is evident in each aspect of the exchange, from the governance structure through the technical structure, evidenced by the layer of privacy and security demonstrated in the schematic in the Business and Technical Operations segment. The Technical Infrastructure of the health information exchange also underscores the importance of privacy and security by focusing on these areas as a key overall principle.

The HHS Privacy and Security Framework for Electronic Exchange of Individually Identifiable Health Information sets out eight principles to guide the actions of health care related persons and entities that participate in health information exchange. It is the intention of Arkansas SHARE to use these principles as the basis of the privacy and security framework for the exchange of health information as follows:

1. Individual Access - Individuals should be provided with a simple and timely means to access and obtain their individually identifiable health information in a readable form and format. Arkansas SHARE will provide a mechanism for which individuals may access their personal identifiable health information.
2. Correction - Individuals should be provided with a timely means to dispute the accuracy or integrity of their individually identifiable health information, and to have erroneous information corrected or to have a dispute documented if their requests are denied. A method for providing corrections for errors will be made available for those individuals that access their personal identifiable health information.
3. Openness and Transparency - There should be openness and transparency about policies, procedures, and technologies that directly affect individuals and/or their individually identifiable health information. Arkansas SHARE will use a diverse governing board, working with broad representation of stakeholders to operate in an environment of openness and transparency. Meetings are open and proceedings are published on a public web site.
4. Individual Choice - Individuals should be provided a reasonable opportunity and capability to make informed decisions about the collection,

- use, and disclosure of their individually identifiable health information. One goal of the health information exchange is to aid the consumer in high quality of health care through the exchange of information. It is the intention of Arkansas SHARE to provide consumers with the choice of the exchange of their health information unless specifically mandated by law. This will involve a high level of education for consumers as to what their information will be used for as well as the rights they possess with regard to the exchange of their personally identifiable health information.
5. Collection, Use, and Disclosure Limitation - Individually identifiable health information should be collected, used, and/or disclosed only to the extent necessary to accomplish a specified purpose(s) and never to discriminate inappropriately. Participants in Arkansas SHARE will be required to enter into an agreement specific to the exchange of information. An agreement will be developed that will specify limitations with regard to the collection, use and disclosure of the health information available through the exchange.
 6. Data Quality and Integrity - Persons and entities should take reasonable steps to ensure that individually identifiable health information is complete, accurate, and up-to-date to the extent necessary for the person's or entity's intended purposes and has not been altered or destroyed in an unauthorized manner. Health care entities in the state of Arkansas currently work to ensure the highest in data quality and integrity standards. Arkansas SHARE will work to make ensure that policies and procedures that are developed are in keeping with this concept.
 7. Safeguards - Individually identifiable health information should be protected with reasonable administrative, technical, and physical safeguards to ensure its confidentiality, integrity, and availability and to prevent unauthorized or inappropriate access, use, or disclosure. Privacy and security safeguards will be developed to minimize the risks of unauthorized or inappropriate access, use, or disclosure of health information. The Technical Infrastructure component of the Arkansas SHARE has worked to include safeguards built into the structure of the information exchange. This concept will also be reflected administratively in policies and procedures to be developed.
 8. Accountability - These principles should be implemented, and adherence assured, through appropriate monitoring and other means and methods should be in place to report and mitigate non-adherence and breaches. The agreement for participation in Arkansas SHARE will contractually bind participants to comply with terms and conditions as specified. These will

include obligations by participants with regard to information safeguards and breach notification requirements.

2. State Laws

Provide plans to analyze and/or modify state laws.

While the review and analysis of existing state law is an ongoing process, SHARE believes that it has identified the significant state and federal laws affecting health information exchange within the State. State laws include: Consent for treatment, electronic signatures, electronic records breach notification, Medicaid, public health reporting, rules of evidence, agency reporting, law enforcement reporting, workers' compensation reporting, FOIA, and breach notification.

Federal laws include: HIPAA including HITECH provisions, FTC Red Flag Rules, E-SIGN, Public Health Services Act, Genetic Information Nondiscrimination Act, FERPA, CLIA, ARRA, and FOIA.

Arkansas does not currently have an electronic health records law. SHARE is evaluating the need to legislate law in this area. Arkansas does plan to sign the limited production version of the Data Use and Reciprocal Support Agreement (DURSA).

Plan: The HITECH provisions in American Reinvestment and Recovery Act of 2009 facilitate and promote the electronic exchange and use of health information for each individual in the United States, with the goal that everyone in the United States will have an EHR by 2014. We are working diligently to establish the legal and policy framework to make this happen in Arkansas.

Our workgroup has completed a table of legal issues that will be addressed in the operations and implementation processes. This table will be amended as new information comes to light. We will identify state and federal laws that are applicable to each of the issues and will develop recommendations based on a review and analysis of these laws. Recommendations will take the forms of policy and state law legislation. We recognize that this project involves an iterative process where work will continue to expand as information is learned from the other work groups, primarily Governance and Business Technical Operations.

No Discrimination for Out-of-State Access: If further state legislation is necessary, we will include a provision to facilitate the appropriate disclosure of electronic medical records to out-of-state providers. Such a provision might read: *OUT-OF-STATE DISCLOSURES. A disclosure otherwise permissible under the Electronic Medical Records Act may be made to providers, health care group purchasers, health care institutions, health information exchanges, or record locator services located or operating outside of the state.*

This section will make clear that if a disclosure is otherwise permissible under state law, it doesn't matter that the disclosure is made to an out-of-state recipient. Provided the disclosure was permissible to an in-state recipient under state law, it would not be prohibited simply because the recipient was located out-of-state.

3. Policies and Procedures

Describe plans to develop policies and procedures necessary to enable and foster information exchange within the state and interstate.

The Arkansas SHARE Office of HIE will oversee drafting of policies and procedures that comply and comport with appropriate authorities as well as the privacy principles articulated in the HHS Privacy and Security Framework. These principles will include policies and procedures that work in harmony with

- governance processes
- privacy and security processes
- sustainability and financial processes

These policies and procedures will be developed with the overall vision and mission of Arkansas SHARE in context. This includes the beginning stages of health information exchange as well as enabling exchange of health information with other states in the future.

The overall goal of the policies and procedures should be to provide clarity for all entities and aid in ensuring transparency throughout. Policies and procedures should be clear and constructed with input from the stakeholder community.

4. Exchange Between States

Describe plans to communicate and/or negotiate with other states to enable exchange.

Interoperability is one of the most difficult problems facing the creation of a national IT infrastructure for exchanging health data. Among current IT investments, interoperability is a 21st-century health care system requirement that can transform the current health care system by decreasing health delivery costs; ensuring that patients have access to the highest quality, most efficient, and safest care; and ensuring that providers have access to a longitudinal electronic health record. And in light of recent natural disasters and bioterrorist events, the need for interoperability has become heightened to ensure that systems can communicate with emergency workers during disasters.

The transformation to the electronic exchange of health information across traditional organizational boundaries is inevitable and is driven by many compelling needs, however there are many challenges. First, the U.S. health care system is highly fragmented. Health care data is stored, often in paper form, in "silos", (e.g., hospitals, laboratories, physician offices, ambulatory treatment centers, and

pharmacies). Second, public health agencies utilize phone, fax and mail to conduct public health surveillance, detection, management and emergency response. Third, physicians spend 20 – 30 percent of their time searching for information and very often do not find the health care information they need at the time when they need it the most, when with the patient.

A multi-state HIE collaborative could advance the successful development, implementation, and deployment of electronic health records and health information exchange technology to support the medical system transformation and value-driven health care initiatives. To maximize the federal and state investment in EHR/HIE, a group of states agree to collaborate on EHR/HIE planning, development and implementation, share best practices and lessons learned and where possible enter into joint ventures and partnerships that maximize the financial and program leverage of the state in implementing their EHR/HIE initiatives. Moreover, collaboration among states would provide opportunities for states to learn from each other and industry experts; discuss the impact of health information standards, policies and guidelines, share lessons learned and collaborate on technical assistance opportunities. Arkansas is currently participating in a Southern regional collaborative forum to enhance current and facilitate future interstate information exchange. The seven Arkansas border states are included in these discussions and at a minimum will be considered in future Arkansas HIE planning as a secondary phase of interconnectivity.

5. Trust Agreements

Describe existing trust agreements that enable the secure flow of information among parties.

To enable and ensure the secure flow of information within Arkansas SHARE and among SHARE participants, the Office of the HIE (the legal entity that staffs and operates SHARE) will develop a trust agreement which will address data sharing, data use, and reciprocal support use. The trust agreement may serve as the HIPAA Business Associate Agreement for all SHARE participants. All participants will sign an identical form alleviating the need to sign separate agreements for everyone on the network with whom information is exchanged. The form will be created by legal staff representing the Arkansas Office of the HIE in collaboration with a team of legal experts who represent SHARE's participants. The form will be vetted by participant organizations.

The Office of the HIE will determine whether an *Information Sharing Addendum* for clinical information exchange is necessary in addition to the trust agreement. If such an Addendum is deemed to be necessary, the Office of the HIE will create the form in the same collaborative manner as outlined in the preceding paragraph.

The trust agreement and any accompanying addendums will be signed by the Office of the HIE and SHARE participants. SHARE participants are expected to have their own set of policies and procedures in place which support the agreements. Furthermore, SHARE participants are expected to enter into Data Use or Reciprocal use agreements with entities with whom they share data for purposes of compilation, analysis, or similar purposes.

6. Stakeholder Endorsement and Oversight

Describe stakeholder endorsement of the statewide policy framework.

Oversight for the exchange of health information will be provided through a variety of channels. The state of Arkansas will need new legislation to address the roles and responsibilities of health information exchanges, and the privacy protections afforded individuals, including the right to opt out of the exchange. This will be logically be enforced by the attorney general's office, which also has authority under the new privacy regulations in the ARRA to monitor data security for medical records.

For day-to-day oversight of the health information exchange, the (New Mexico has a collaborative committee here) will represent major stakeholders and be responsible for ensuring the exchange is operating effectively and within the appropriate regulatory environment.

Major stakeholders include:

- Healthcare providers
- Patient and consumer organizations
- Health plans
- Healthcare purchasers and employers
- Other HIT users and care agents
- Health professions schools, universities, and colleges,
- Public health agencies
- Health information technology vendors
- Clinical researchers